

AMENDED IN ASSEMBLY SEPTEMBER 6, 2013

AMENDED IN ASSEMBLY SEPTEMBER 3, 2013

AMENDED IN ASSEMBLY AUGUST 15, 2013

AMENDED IN ASSEMBLY AUGUST 6, 2013

AMENDED IN ASSEMBLY JUNE 27, 2013

AMENDED IN SENATE MAY 24, 2013

AMENDED IN SENATE APRIL 16, 2013

SENATE BILL

No. 570

Introduced by Senator DeSaulnier

February 22, 2013

An act to add Division 10.11 (commencing with Section 11999.40) to the Health and Safety Code, relating to alcohol and other drug counselors.

LEGISLATIVE COUNSEL'S DIGEST

SB 570, as amended, DeSaulnier. Alcohol and other drug counselors.

Existing law provides for the registration, certification, and licensure of various healing arts professionals. Existing law provides for various programs to eliminate alcohol and drug abuse, and states the finding of the Legislature that state government has an affirmative role in alleviating problems related to the inappropriate use of alcoholic beverages and other drug use.

This bill would require the State Department of Health Care Services, commencing January 1, 2015, to require each person who applies to an approved certifying organization, *as defined*, to become registered or certified as an alcohol or other drug counselor (AOD counselor) or any

AOD counselor who is registered or certified as of January 1, 2015, to obtain a criminal background check, as specified. The bill would require the State Department of Health Care Services to submit to the Department of Justice fingerprint images and related information for the purpose of obtaining information as to the existence of past criminal conduct, as specified. The bill would require the Department of Justice to obtain specified information from the Federal Bureau of Investigation with respect to an applicant's or AOD counselor's past criminal conduct, and to provide this information to the State Department of Health Care Services. The bill would require the Department of Justice to charge a reasonable fee to an individual obtaining a criminal background check, sufficient to cover the cost of processing the criminal background check request. The bill would require the State Department of Health Care Services to establish a reasonable application fee, sufficient to cover the department's actual reasonable administrative costs in implementing the provisions of the bill, to be charged to the certifying organization for each applicant or AOD counselor requesting a background check. The bill would require the fees to be deposited into the Alcohol and Other Drug Counselor Professions Fund, which would be created by the bill. The bill would require the fund to be administered by the State Department of Health Care Services, and would make moneys in the fund available, upon appropriation, for purposes of administering the provisions of the bill. The bill would require the State Department of Health Care Services, by September 1, 2014, to adopt regulations to implement the provisions of the bill, as specified. ~~The bill would require the State Department of Health Care Services to establish the Director's Advisory Panel, consisting of members who meet specified criteria. The bill would authorize the panel to advise the department on the development of criteria for baseline decisions regarding AOD counselors, as these decisions relate to criminal background checks, and to make recommendations to the department regarding the criteria for disciplinary guidelines.~~ The bill would require the department and approved certifying organizations to share specified information.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Division 10.11 (commencing with Section
- 2 11999.40) is added to the Health and Safety Code, to read:

DIVISION 10.11. ALCOHOL AND OTHER DRUG
COUNSELORS

11999.40. For purposes of this division, the following definitions apply:

(a) “AOD counselor” means a person registered or certified as an alcohol or other drug counselor by an approved certifying organization.

(b) “Approved certifying organization” means an organization that the department has approved to register or certify AOD counselors.

(c) “Department” means the State Department of Health Care Services.

(d) “Director” means the Director of Health Care Services.

~~(e) “Panel” means the Director’s Advisory Panel established pursuant to Section 11999.43.~~

11999.41. (a) Commencing January 1, 2015, the department shall require approved certifying organizations to require each person who applies to become registered or certified as an AOD counselor and any AOD counselor who is registered or certified as an AOD counselor as of January 1, 2015, to submit fingerprint images via Live Scan for purposes of obtaining a criminal background check under this section.

(b) For persons described in subdivision (a), the department shall electronically submit to the Department of Justice fingerprint images and related information required by the Department of Justice for the purpose of obtaining both of the following:

(1) The existence and content of a record of state or federal convictions and state or federal arrests.

(2) Information as to the existence and content of a record of state or federal arrests for which the Department of Justice establishes that the person is free on bail or on his or her recognizance pending trial or appeal.

(c) The Department of Justice shall forward to the Federal Bureau of Investigation requests for federal summary criminal history information received pursuant to this section. The Department of Justice shall review the information returned from the Federal Bureau of Investigation and compile and disseminate a response to the department.

1 (d) The Department of Justice shall provide a state or federal
2 response to the department pursuant to subdivision (p) of Section
3 11105 of the Penal Code.

4 (e) The department shall request from the Department of Justice
5 subsequent notification service, as provided pursuant to Section
6 11105.2 of the Penal Code, for persons described in subdivision
7 (a).

8 (f) The Department of Justice shall charge the subject of the
9 criminal background check a reasonable fee sufficient to cover the
10 cost to the Department of Justice of processing the requests
11 described in this section.

12 (g) (1) For persons described in subdivision (a), the department
13 shall review all criminal background information received from
14 the Department of Justice and determine, based on the regulations
15 developed pursuant to subdivision (a) of Section 11999.42, whether
16 to deny an application or revoke a registration or certification based
17 on the criminal background information. The department shall
18 notify the individual's certifying organization of the department's
19 determination.

20 (2) The department may deny or revoke a registration or
21 certification pursuant to this subdivision only if the conviction of
22 a crime is substantially related to the qualifications, functions, or
23 duties of a registered or certified AOD counselor.

24 (3) The department shall not deny or revoke a registration or
25 certification pursuant to this subdivision solely on the basis of
26 convictions stemming from prior use of drugs or alcohol, provided
27 the individual meets the terms of rehabilitation established in
28 regulations developed pursuant to subdivision (a) of Section
29 11999.42.

30 (h) An applicant or AOD counselor whose application is denied
31 or whose registration or certification is revoked pursuant to
32 subdivision (g) shall have the right to appeal the denial or
33 revocation in accordance with Chapter 5 (commencing with Section
34 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

35 (i) The department shall establish a reasonable application fee
36 to be charged to the certifying organization for each applicant or
37 AOD counselor requesting a background check pursuant to this
38 section. The department shall set the fee at an amount that is
39 sufficient to cover, but shall not exceed, the actual reasonable costs
40 of administering this division.

1 (j) The Alcohol and Other Drug Counselor Professions Fund is
2 hereby created in the State Treasury, to be administered by the
3 department. The fund shall consist of the fees specified in
4 subdivision (i). Moneys in the fund shall be available, upon
5 appropriation, for the purposes specified in subdivision (i).

6 11999.42. (a) By September 1, 2014, the department shall
7 adopt regulations to implement this division, which shall include,
8 but are not limited to, individualized assessment standards,
9 exemptions, and terms of rehabilitation for eligibility to become
10 or to continue to be registered or certified as an AOD counselor,
11 including rebuttable presumptions with respect to the acceptance
12 or rejection of an applicant or an AOD counselor with a prior
13 criminal conviction.

14 (b) In adopting regulations pursuant to this section, the
15 department shall convene and consult a stakeholder's group ~~and~~
16 ~~consult the Director's Advisory Panel established under Section~~
17 ~~11999.43 to advise the department on the development of criteria~~
18 ~~for baseline decisions regarding AOD counselors, as these~~
19 ~~decisions relate to criminal background checks and to make~~
20 ~~recommendations to the department regarding criteria for~~
21 ~~disciplinary guidelines.~~

22 (c) The regulations described in subdivision (a) may be adopted
23 as emergency regulations. The adoption of these regulations is
24 deemed to address an emergency and to be necessary for the
25 immediate preservation of the public peace, health, safety, or
26 general welfare. Emergency regulations authorized by this
27 subdivision shall be exempt from review by the Office of
28 Administrative Law. However, the department shall transmit those
29 regulations to the Office of Administrative Law for filing with the
30 Secretary of State and publication in the California Code of
31 Regulations. Notwithstanding any other law, for purposes of
32 subdivision (e) of Section 11346.1 of the Government Code, the
33 180-day period, as applicable to the effective period of an
34 emergency regulatory action and submission of specified materials
35 to the Office of Administrative Law, is hereby extended to one
36 year, by which time the department shall have adopted permanent
37 regulations.

38 ~~11999.43. The department shall establish the Director's~~
39 ~~Advisory Panel.~~

1 (a) ~~The director shall select the members of the panel. The panel~~
2 ~~shall consist of subject matter experts in accordance with the~~
3 ~~following:~~

4 (1) ~~No less than 75 percent of the panel shall be comprised of~~
5 ~~certified AOD counselors with at least five years of experience in~~
6 ~~alcohol and drug treatment services, who have submitted~~
7 ~~fingerprint images via Live Scan for criminal background checks~~
8 ~~under Section 11999.41. Prior to selecting each member of the~~
9 ~~panel, the director shall review the prospective member's criminal~~
10 ~~background information.~~

11 (2) ~~Each remaining member of the panel shall be an individual,~~
12 ~~not certified as an AOD counselor, whom the director determines~~
13 ~~to be a subject matter expert in the area of substance abuse.~~

14 (b) ~~The panel may do both of the following:~~

15 (1) ~~Consistent with any applicable regulations established~~
16 ~~pursuant to Section 11999.42, advise the department on the~~
17 ~~development of criteria for baseline decisions regarding AOD~~
18 ~~counselors, as these decisions relate to criminal background checks.~~
19 ~~These criteria may include, but are not limited to, the circumstances~~
20 ~~that would allow for registration or certification of an applicant or~~
21 ~~AOD counselor, notwithstanding an applicant's or AOD~~
22 ~~counselor's prior criminal conviction.~~

23 (2) ~~Make recommendations to the department regarding criteria~~
24 ~~for disciplinary guidelines.~~

25 ~~11999.44.~~

26 ~~11999.43.~~ An approved certifying organization shall do all of
27 the following:

28 (a) Report complaints made against an AOD counselor to the
29 department, and assist in documenting these complaints.

30 (b) Comply with the department's decisions regarding
31 disciplinary actions, including initial denial of a registration or
32 certification.

33 (c) Report any known criminal convictions of an AOD counselor
34 to the department.

35 ~~11999.45.~~

36 ~~11999.44.~~ The department shall report any complaints made
37 to the department against an AOD counselor to the approved
38 certifying organization that conferred the individual's registration

- 1 or certification and assist that organization in documenting the
- 2 complaint.

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